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CENTRAL ILLINOIS LIGHT COMPANY)
d/b/a AmerenCILCO,)

Proposed general increase in rates for delivery)
service.)

Docket No. 06-0070

CENTRAL ILLINOIS PUBLIC SERVICE)
COMPANY d/b/a AmerenCIPS,)

Proposed general increase in rates for delivery)
service.)

Docket No. 06-0071

ILLINOIS POWER COMPANY d/b/a)
AmerenIP,)

Proposed general increase in rates for delivery)
service.)

Docket No. 06-0072

**THE IBEW'S REPLY TO AMEREN'S RESPONSE IN OBJECTION TO
THE IBEW'S SUBPOENA APPLICATION**

NOW COME Local Unions 51, 309, 649, 702, and 1306 of the International Brotherhood of Electrical Workers, AFL-CIO (the "IBEW"), by its attorneys, and file the IBEW's reply to the Ameren Companies' Response In Objection to IBEW's Subpoenas ("Ameren Response"). For the reasons stated below, the IBEW requests that the Administrative Law Judges reject Ameren's Response as unfounded and tantamount to a collateral attack on the Judges' May 22 ruling. The IBEW further requests that the Administrative Law Judges issue the subpoenas consistent with the timeline outlined in Commission Staff's response.

Ameren's Legal Theory For Opposing the IBEW's Subpoenas Is Without Merit

Ameren objects to the IBEW's subpoenas because the information the IBEW seeks is purportedly irrelevant to the scope of these tariff investigations. To support its objection, Ameren essentially regurgitates the baseless arguments it advanced in its Motion to Strike the IBEW's direct testimony.¹ As with its Motion, Ameren claims that Section 9-201 of the Public Utilities Act (the "PUA") only permits the Commission to determine the just and reasonableness of Ameren's proposed delivery service rates, and bars the Commission from evaluating the actual practices Ameren will use implement its proposed tariffs. Ameren Response at 2. Ameren reasons that its interpretation is correct because the terms "actual practices" do not appear in Section 9-201. *Id.* Unsurprisingly, Ameren cites no authority for its erroneous legal theory. As explained below, Ameren's construction of Section 9-201 is contrary to the provision's plain language and Commission decisions.

Section 9-201(a) states that a utility cannot change "any rate or other charge or classification" or "any rule, regulation, *practice* or contract *relating to or affecting any...service*" unless the Commission permits that change to go into effect. 220 ILCS 5/9-201(a). Section 9-201(a) further provides that a utility must conspicuously disclose each proposed change to the Commission and the public. *Id.* Section 9-201(b) authorizes the Commission to suspend and investigate any proposed change or allow it take effect. 220 ILCS 5/9-201(b). Section 9-201(c) builds off of each of these subsections and makes clear that when the Commission investigates a proposed change it must "establish the rates or other charges, classifications, contracts, practices,

¹ Compare Ameren Response at 1, 3, and 4 (arguing, respectively, that the IBEW "continues its efforts to hijack this rate case and turn into a forum to air and litigate labor grievances," seeks answers to questions that "would be entire unhelpful to the ALJs and the Commission in determining the Ameren Companies' delivery service rates," and attempts to "convert[] this rate case into a forum to resolve labor disputes") with Ameren Motion to Strike at 2-5, 6, 9, 11 (claiming that the IBEW's metering service testimony is irrelevant because it simply seeks

rules or regulations proposed” that the Commission finds “just and reasonable.” 220 ILCS 5/9-201(c). Taken together, these subsections vest the Commission with the authority to investigate the just and reasonableness of not only any proposed rate change it suspends, but also any suspended changes to practices relating to or affecting any service. Accordingly, Ameren’s claim that Section 9-201 only allows the Commission to determine the just and reasonableness of its delivery service rates is without merit, especially since all of Ameren’s proposed changes were suspended by the Commission, including its metering service tariffs.²

Ameren’s legal theory also cannot be squared with Commission decisions. The Commission has concluded that Section 9-201 affords it “broad and flexible” authority to “determine what constitutes a ‘just and reasonable’ tariff provision” based on the particular facts and circumstances of each case.³ And, as far back as 1979, the Commission explained that a tariff investigation requires it to “establish rates or other charges, classifications of services, *contractual practices*, *operating practices* and rules or regulations under which utility service is provided which are just and reasonable for ratepayers located in the service area of a utility.”⁴ Based on these statements, the Commission undoubtedly has the authority to investigate the propriety of the actual practices Ameren will use to implement its metering service tariffs. After all, the Commission must keep itself informed of the manner and method in which a utility will

to litigate a pending labor grievance) *id.* at 2-3, 5, 6, and 11 (arguing that the IBEW’s testimony was irrelevant to any issue in this “rate proceeding”).

² The Illinois Supreme Court has long held that when a utility submits tariffs changes and the Commission undertakes an investigation to determine their just and reasonableness, the utility puts in issue not only its proposed tariff change, but also all existing tariff provisions referenced by the new tariff. *Northern Illinois Water Corp. v. Ill. Commerce Comm’n*, 33 Ill.2d 580, 586 (1966). Clearly, by filing completely new tariffs, Ameren has placed all aspects of its tariffs in issue.

³ *Illinois Bell Telephone Company: Proposed implementation of High Frequency Portion of Loop (HFLP)/Line Sharing Service*, ICC Docket No. 00-0393, 2001 Ill. PUC LEXIS 271, at *6-*7 (Order entered Mar. 14, 2001) (“*Project Pronto Order*”).

⁴ *Illinois Power Company: Proposed general increases in electric and gas rates and revisions of the Electric and Gas Rules, Regulations and Conditions of Services*, ICC Docket No. 79-0071, 1979 Ill. PUC LEXIS 6, at *103-*104 (Order entered Nov. 28, 1979) (emphasis added) (discussing then-Section 32 of the PUA, which is now

conduct its business, 220 ILCS 5/4-101, and ensure that the utility will furnish, provide and maintain services that promote the safety, health, comfort, and convenience its patrons, employees, and the public. 220 ILCS 5/8-101.⁵

Moreover, there is no merit to Ameren's contention that the IBEW's interpretation of Section 9-201 would require a utility to seek ICC approval and a change in its tariffs "if it were to outsource anything from cleaning services in its headquarters to maintenance of its trucks." Ameren Response at 2. The reason Ameren's argument fails is because it is a *non sequitur*. Section 9-201(a) makes clear that a utility cannot change "any rate or other charge or classification" or "any rule, regulation, *practice* or contract *relating to or affecting any...service*" unless the Commission permits the change to go into effect. 220 ILCS 5/9-201(a) (emphasis added). While Section 3-115 of the PUA broadly defines the term "service," neither of Ameren's above examples fall within that definition. 220 ILCS 5/3-115. Ameren is not in the business of furnishing customers with office cleaning services or vehicle maintenance; it does, however, intend to provide customers with metering services.

Similarly, Ameren is incorrect when it baldly asserts that the IBEW's complaint "is not so much what the [utility's] tariff says, but how the utility operates day to day." Ameren Response at 2. To the contrary, the IBEW's issue with Ameren's metering service tariffs includes both what they say and how the utility will actually provide those services. Ameren's tariffs claim that it will provide customers with the option of receiving "metering services" from "the Company" or a "Meter Service Provider."⁶ Ameren's own tariffs use Code Part 460.15 of

Section 9-201). Accord Union Electric Company: Proposed increase in natural gas rates, ICC Docket No. 82-0094, 1982 Ill. PUC LEXIS 2, at *14 (Order entered Dec. 28, 1982)

⁵ See *Commonwealth Edison Company: Proposed general increase in electric rates et seq.*, ICC Docket No. 58340, 1974 Ill. PUC LEXIS 12, at *65 (Order entered Apr. 10, 1974) ("The obligation of the Commission to protect and enhance the safety, health, comfort and convenience of the patrons, employees and the public serviced by a public utility is one of the primary purposes of regulation.").

⁶ See e.g., AmerenCIPS Proposed Ill. C. C. No. 16 Original Sheet No. 3.004.

the Commission's Rules to define what constitutes a "metering service," and define the term "Company" in a singular manner to mean "the legal entity noted in the header" its tariff schedules.⁷ These tariffs further state that Ameren will "own, furnish, install, calibrate, test, and maintain" all of its "meters and all associated equipment" used for billing and settlement purposes."⁸ The IBEW's testimony, however, shows that Ameren will not perform all "metering services" for customers choosing the utility, nor will it own, furnish, or maintain *all* "meters and associated equipment." Rather, Ameren will use Cellnet and Terasen to provide certain "metering services," and Cellnet will actually own AMR modules and its automated meter reading communications system. *See e.g.*, IBEW Exhibit 2.0, Miller Testimony, at 10-13 (lines 209-288). Accordingly, the IBEW's subpoenas seek to obtain information regarding what metering services Cellnet and Terasen will provide to Ameren and the skills, training and experience of the contractors' personnel. *See* IBEW Subpoena Application at 5-6.

The Six Subpoena Questions Ameren Challenges Are Relevant To These Proceedings

Ameren also claims that six questions contained in the IBEW's subpoenas seek information that is "entirely irrelevant" to these proceedings is baseless. Ameren Response at 3. Each question is listed below along with the IBEW's response regarding its relevancy.

- IBEW [Terasen] Question 1.05. Has [Terasen] executed a contract with Cellnet Technology, Inc. to deploy all or part of Cellnet Technology, Inc.'s automated meter reading (AMR) system to electric and gas meters in Ameren's Illinois service territory?

Response: The question and information sought by it are relevant because it seeks to corroborate Ameren's response to IBEW DR 2-17 where Ameren discloses that Cellnet has engaged Terasen to deploy all or part of Cellnet's AMR system in Ameren's Illinois service territory and describes the services Terasen will perform. See Exhibit 1.

⁷ *Id.* at Original Sheet Nos. 3.006, 3.008.

⁸ *Id.* at Original Sheet No. 4.021.

- IBEW [Terasen] Question 1.10. Will the Company possess workers' compensation insurance to cover its employees in compliance with the Illinois Workers' Compensation Insurance Act (820 ILCS 305/1 et seq.)?

Response: The question is relevant because it seeks information indicating compliance with Code Part 460 of the Commission's Rules. Code Part 460 requires meter service providers to comply with the Illinois Workers' Compensation Insurance Act. 83 Ill. Admin. Code 460.100(b)(2). It is the IBEW's legal position that one way Cellnet and Terasen may qualify to provide metering services on Ameren's behalf is if they meet Code Part 460's requirements.⁹

- IBEW [Terasen] Question 1.12. Please produce a copy of any metering service training or instructional materials that Ameren or Cellnet Technology, Inc. has provided to the Company in order for the Company and its employees or agents to install, operate or maintain all or part of Cellnet Technology, Inc.'s automated meter reading (AMR) system in Ameren's Illinois service territory?

Response: The question and information sought by it are relevant because it seeks to corroborate that the materials Terasen has or will receive from Ameren are the same materials Ameren will produce to the IBEW per IBEW DRs 2-15 and 2-24 attached hereto as Exhibits 2 and 3. The information sought is relevant to the type of training Terasen personnel will undergo prior to furnishing metering services to Ameren.

- IBEW [Cellnet] Question 1.05. Does Cellnet Technology, Inc. possess either (a) according to Dun & Bradstreet Business Information Report no more than 30 days old a Composite Credit Appraisal of "3" or lower and a PAYDEX score of "70" or higher, or (B) according to an Experian Small Business Intelliscore report an Intelliscore of "63" or higher?

Response: The question and information sought by it are relevant because it seeks information also indicating compliance with Code Part 460 of the Commission's Rules. Code Part 460.100(a)(1) & (2) requires a meter service provider to possess either one of the above credit scores.

- IBEW [Cellnet] Question 1.11. Please produce an unredacted copy of the executed contract, including exhibits and attachments between Cellnet Technology, Inc. and Terasen Utility Services whereby Terasen Utility Services will deploy all or parts of Cellnet Technology, Inc.'s automated meter reading (AMR) system in Ameren's Illinois service territory?

⁹ Even assuming *arguendo* that Cellnet and Terasen are not subject to Code Part 460, the information sought by the question is still relevant. Illinois courts have long held that administrative rules establishing safety regulations, like Code Part 460, provide evidence of the proper standard of fitness or care. *Darling v. Charleston Community Memorial Hospital*, 33 Ill.2d 326, 332 (1965). It is the IBEW's that Cellnet's or Terasen's compliance or non-compliance with the workers' compensation requirement is evidence bearing upon the reasonableness of Ameren's decision to choose these contractors as providing metering services.

Response: The question and information sought are relevant because it seeks to corroborate Ameren's response to IBEW DR 2-17 where Ameren discloses the scope of Terasen's involvement in deploying Cellnet's AMR system. See Exhibit 1 attached hereto. Not only that, Ameren stated in response to IBEW DR 2-19 that it "does not have access to the private contracts between Cellnet and entities it employs." See Exhibit 4 attached hereto.

- IBEW [Cellnet] Question 1.13. How many employees will Cellnet Technology, Inc. employ to deploy its automated meter reading (AMR) system in Ameren's Illinois service territory?

Response: The number of employees Cellnet will use to deploy its AMR system is relevant to the overall evaluation of the scope of metering services Cellnet will provide to Ameren and Cellnet's qualifications to provide those services.

* * *

Before addressing Commission Staff's Response, the IBEW believes it must set the record straight regarding Ameren's insolent suggestion that the IBEW's subpoena application "threatens to swallow the procedural schedule" of these proceedings. The IBEW served Ameren with data requests regarding its metering service tariffs and practices on March 17 with a requested response date of April 3. Ameren ignored the response date and initially provided entirely non-responsive answers on April 10. Only after repeated correspondence to Ameren's attorney did the IBEW receive forthcoming responses on April 24 that would permit it to assess the need for subpoenas. After filing its direct testimony two days later, the IBEW began drafting in earnest its subpoena application. That application was, for obvious reasons, put on hold because of Ameren's May 5 Motion to Strike the IBEW's Direct Testimony. Upon receiving the Administrative Law Judges' ruling denying Ameren's Motion on May 22, the IBEW promptly completed and filed its subpoena application with the Commission four days after that ruling. In sum, any delay to the schedule in these proceedings is solely attributable to Ameren's foot-dragging and petty behavior.

With that said, the IBEW offers one additional comment. The Commission decided long ago that if a party is dissatisfied with an Administrative Law Judge's ruling, then its only recourse is to seek interlocutory review from the Commission.¹⁰ As noted above, Ameren's Response raises the same arguments that the Administrative Law Judges found unavailing on May 22 when they denied Ameren's Motion to Strike. Since Ameren has not sought interlocutory review of that ruling, Ameren's Response is tantamount to a collateral attack on Administrative Law Judges' May 22 ruling and should be rejected as such.¹¹

The IBEW Has No Objection To Commission Staff's Response

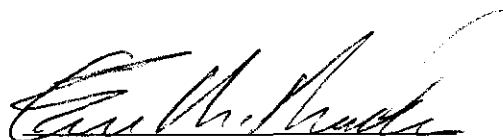
Commission Staff filed a response to the IBEW's subpoena application requesting that parties be given three days to serve re-cross questions after being served with re-direct questions, and responses to re-cross questions be served via email on or before June 21. Since the IBEW does not anticipate serving re-direct questions, the IBEW has no objection with Commission Staff's proposal.

¹⁰ *North Shore Gas Company: Proposed increase in natural gas rates*, ICC Docket No. 91-0010, 1991 Ill. PUC LEXIS 636, *150 (Order entered Nov. 8, 1991).

¹¹ *See Central Telephone Company: Proposed Increase in Local Service Rates*, ICC Docket No. 93-0252, 1994 Ill. PUC LEXIS 206, at *62-*63 (Order entered May 11, 1994).

WHEREFORE, for all the above reasons, the IBEW respectfully requests that the Administrative Law Judges reject Ameren's Response and issue the IBEW's subpoenas consistent with the IBEW's application and Commission Staff's request.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Eric M. Madiar", written in a cursive style.

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June 6, 2006

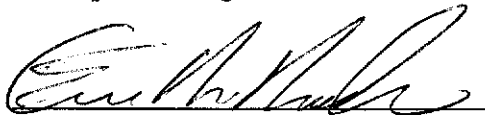
Counsel for Locals 51, 309, 649, 702
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Brotherhood of Electrical Workers,
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NOTICE OF FILING

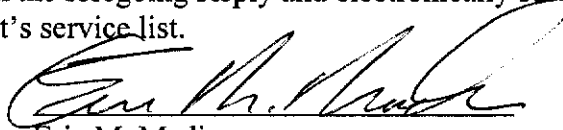
Please take notice that on June 6, 2006, I caused to be filed with the Chief Clerk of the Illinois Commerce Commission, Elizabeth Rolando, 527 East Capitol Avenue, Springfield, IL 62701 the enclosed Reply to Ameren's Response In Objection To IBEW's Subpoenas on behalf of Local Unions 51, 309, 649, 702 and 1306 of the International Brotherhood of Electrical Workers, AFL-CIO in the above-captioned proceedings.



Eric M. Madiar
Attorney for Local Unions 51, 309, 649, 702 and 1306
International Brotherhood of Electrical Workers, AFL-CIO

CERTIFICATE OF SERVICE

Please take note that on June 6, 2006, I, Eric M. Madiar, hereby certify that I did file with the Illinois Commerce Commission the foregoing Reply and electronically served the same upon the persons identified on the docket's service list.



Eric M. Madiar

Attorney for Local Unions 51, 309, 649, 702 and 1306

International Brotherhood of Electrical Workers, AFL-CIO

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